

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0345**

**Income Tax  
For Tax Year 1998**

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**ISSUE**

**I. Tax Administration—Negligence Penalty and Underpayment Penalty**

**Authority:** IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests a ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments, ten percent (10%) negligence penalty and interest. The Department also imposed a ten percent (10%) underpayment penalty. Taxpayer protests the imposition of penalty. Further facts will be provided as necessary.

**I. Tax Administration—Negligence Penalty and Underpayment Penalty**

**DISCUSSION**

The Department issued proposed assessments and the ten percent (10%) negligence penalty for the tax years in question, as well as a ten percent (10%) underpayment penalty for a 1998 quarterly estimated tax payment. Taxpayer protests the imposition of both penalties. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). In its protest letter, taxpayer states that it exercised ordinary business care and prudence in filing income tax returns with Indiana. Also in its protest letter, taxpayer states that it was not required to file an estimated quarterly return and so should not have to pay a penalty for failure to file an estimated quarterly return. Since the Department issued assessments for unpaid tax, and taxpayer has not protested the assessments except for the penalties, it stands to reason that taxpayer failed both to exercise reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer and that taxpayer was required to file estimated quarterly returns. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

### **FINDING**

Taxpayer's protest is denied.

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